

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

TASHA FAYE CORBITT

PLAINTIFF

V.

CIVIL ACTION NO. 3:14cv91-HTW-LRA

CAROLYN W. COLVIN

Acting Commissioner of Social Security

DEFENDANT

REPORT AND RECOMMENDATION

This cause is before the Court on Defendant's Motion to Dismiss. [16]. Having considered the parties' filings with respect to the motion, the undersigned recommends that the motion be denied.

Plaintiff filed for judicial review of the denial of her application for social security benefits on December 2, 2013, in the United States District Court for the Northern District of Mississippi. [19-1]. After being informed that she had chosen the wrong venue, Plaintiff dismissed that case and attempted to re-file in this Court on January 14,¹ 2014. [19-2], [19-3]. Plaintiff listed a prior address for the Clerk of this Court, however, and the complaint was not filed with this Court until February 4, 2014. [1].

Defendant has moved to dismiss this case, arguing that Plaintiff's sixty day window to seek judicial review of the denial of her application for social security benefits closed on January 22, 2014, the day the sixty-day limitations period expired. 42 U.S.C. § 405(g). Plaintiff does not

¹The civil cover sheet for this case is dated January 15, 2014, still within the limitations period. [1-1].

dispute Defendant's time calculation, but argues that her lawsuit was timely filed, albeit in the wrong venue. Alternatively, Plaintiff argues that equitable tolling of the sixty-day period is appropriate under the circumstances.

Though the undersigned recognizes that the limitations period is generally strictly construed in these cases, the undersigned finds that based on the facts before the Court, Plaintiff's suit should not be dismissed. *See, e.g., Bowen v. City of New York*, 476 U.S. 467, 479 (1986)(60 day period may be tolled); *Flores v. Sullivan*, 945 F.2d 109, 112 (5th Cir. 1990)(tolling not applicable based on facts presented). Plaintiff has provided a copy of a 2014 Mississippi Judicial Directory and Court Calendar [19-4], from which she obtained the incorrect mailing address for this Court. Moreover, the case could have been transferred to this district rather than dismissed and re-filed. 28 U.S.C. § 1406(a).

Accordingly, the undersigned recommends that Defendant's motion be denied.

RESPECTFULLY SUBMITTED, this the 3rd day of December, 2014.

/s/ Linda R. Anderson
UNITED STATES MAGISTRATE JUDGE